

EXHIBIT 6

**Defendants' Motion to Exclude Gene
Deetz (Jan. 6, 2017), Case No. 15-cv-3378,
Dkt. No. 322 (Jan. 6, 2017)**

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

GOLDEN BOY PROMOTIONS,
LLC, *et al.*,

Plaintiffs,

v.

ALAN HAYMON, *et al.*,

Defendants.

Case No. 2:15-cv-3378-JFW-MRW

**DEFENDANTS' MOTION IN
LIMINE NO. 1 TO EXCLUDE THE
TESTIMONY OF PLAINTIFFS'
PROFFERED EXPERT, GENE
DEETZ**

Hearing Date for Motions *in Limine*:
February 10, 2017 at 9:00 a.m.
Judge: Hon. John F. Walter
Courtroom: 7A

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Pre-Trial Conference Date: January 20,
2017 at 9:00 a.m.

Filing Date: May 5, 2015
Trial Date: March 14, 2017

1 **IDENTIFICATION OF MATTERS IN DISPUTE**

2 Defendants Alan Haymon, Alan Haymon Development, Inc., Haymon
3 Boxing LLC, Haymon Boxing Management, Haymon Holdings LLC, and Haymon
4 Sports LLC (collectively, the “Haymon Defendants”) hereby move the Court to
5 exclude the opinions of Gene Deetz, which Plaintiffs Golden Boy Promotions, LLC
6 and Golden Boy Promotions, Inc. (collectively, “GBP”) plan to offer at trial. Mr.
7 Deetz, a Certified Public Accountant, was retained by GBP to “review and analyze
8 financial data and documents related to the above-referenced litigation and to
9 provide [his] expert opinions regarding damages, if any, suffered by GBP as a result
10 of Haymon’s alleged anticompetitive practices in the boxing industry.” Wolfson
11 Decl., Ex. A (Expert Report of Gene Deetz, dated September 6, 2016 (“Deetz Rep.”)
12 at ¶ 14). However, Mr. Deetz’s methodology is so fundamentally flawed that his
13 opinions must be excluded in their entirety pursuant to the strictures of Fed. R. Evid.
14 702 and the *Daubert* standard.

15 In his Report, Mr. Deetz proposes a lost profits analysis that looks at GBP’s
16 overall “Income from Boxing Operations” for 2014—a metric he created for the
17 purposes of this litigation—and then compares that number to the Income from
18 Boxing Operations for 2015 and 2016, as well as his projections of what GBP
19 should make in the future. Mr. Deetz concludes there was a drop in Income From
20 Boxing Operations from 2014 to the present and, based on the parallel opinion of
21 GBP’s economist, Robert Kneuper, Ph.D. (discussed in Motion *in Limine* No. 2),
22 Mr. Deetz further concludes that the drop is due to Defendants’ alleged wrongful
23 conduct and constitutes GBP’s money damages. His damages estimates are the
24 difference between what GBP actually made and what Mr. Deetz thinks they should
25 have made in 2015 and beyond.

26 Mr. Deetz’s opinions suffer from three fundamental flaws (among others) that
27 render his testimony improper under Federal Rule of Evidence 702:
28

- 1 • Mr. Deetz fails to separately show how Golden Boy was harmed under
2 each of its liability theories. This task, called “disaggregation,” is required
3 under both Supreme Court and Ninth Circuit precedent. A failure to
4 disaggregate requires exclusion, because the jury is otherwise left to
5 speculate as to the correct measure and amount of damages.
- 6 • Mr. Deetz’s damages theory does not track Golden Boy’s liability theories,
7 which means Golden Boy is seeking damages for supposed losses that
8 have nothing to do with this case. Specifically, Mr. Deetz estimates
9 damages based on GBP’s profits for *all* of the boxers it promotes,
10 including so-called Championship-Caliber Boxers (“CCBs”) *and* boxers
11 that do not have that designation, yet Golden Boy never made any
12 allegations of harm arising from the inability to attract non-CCBs, and has
13 offered no proof in support of a finding of liability premised on such a
14 theory. Plaintiffs have claimed that this inclusion reduces their overall
15 damages, but that is incorrect because non-CCBs’ inclusion—and
16 misclassification, as noted in the next bullet point—creates a misleading
17 picture of GBP’s overall finances and attempts to seek damages for losses
18 that are not reasonably linked to the allegations in this case.
- 19 • Mr. Deetz’s methodology depends on the classification of boxers between
20 CCB and non-CCB, but he, a CPA with no expertise in economics and (by
21 his own admission) no ability to conduct the categorization analysis,
22 nevertheless sorted GBP’s boxers into these categories himself. This
23 categorization is very important to Mr. Deetz’s end conclusions because,
24 depending on how a boxer is classified (or misclassified), GBP’s finances
25 tell very different tales.¹ That Mr. Deetz performed this analysis himself is
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27 ¹ In Mr. Deetz’s original report—before he amended it in response to
28 Defendants’ rebuttal expert testimony—GBP’s income from CCBs went *up* from

1 inherently disqualifying. And, tellingly, he also categorized 47 separate
2 boxers as CCBs that Dr. Kneuper, GBP's actual economic expert, did *not*
3 classify as CCBs. Given this disagreement with the economist that
4 actually manufactured the CCB definition, the damages methodology
5 facially violates GBP's own economic analysis and must therefore be
6 excluded as fundamentally untrustworthy.

7 Plaintiffs disagree with these assertions. First, Defendants' contention that
8 strict "disaggregation" is required is incorrect as a matter of law. Notably, they have
9 failed to cite a single case which stands for that proposition, and none of the cases
10 they cite apply the supposed rule of disaggregation to exclude the testimony of a
11 damages witness in its entirety. Simply put, the alleged requirement of
12 "disaggregation" is not, and by definition, cannot be, a basis to exclude Mr. Deetz's
13 testimony in its entirety.

14 Second, Defendants' argument that Mr. Deetz improperly includes all boxers
15 Golden Boy promotes in his calculation of lost profits fundamentally
16 misunderstands the nature of boxing promotion and the calculation performed by
17 Mr. Deetz. According to Defendants, it is improper to include non-championship
18 caliber boxers in the lost profits calculation because Plaintiffs do not allege that
19 Defendants have engaged in any misconduct with respect to non-championship
20 caliber boxers. What Defendants fail to recognize (or deliberately ignore and
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22 2014 to the present. Its primary losses occurred with respect to non-CCBs.
23 Wolfson Decl., Ex. A (Deetz Rep., Ex. 3). Mr. Deetz subsequently supplemented
24 his report and re-categorized GBP's boxers differently (based on no new
25 information) so as to paint a picture of declining CCB profits from 2014-2016 and
26 flattened non-CCB losses in the same period. *See generally* Wolfson Decl., Ex. C
27 (Supplement to Exhibit 3 of the Expert Report of Gene Deetz, Exhibit 3, dated
28 October 19, 2016 ("Revised Exhibit 3")). Defendants note that the 2016 figures in
Mr. Deetz's Exhibit 3 are only through June 2016. For his damages calculations, he
multiplied the January-June 2016 numbers by two to get a full year profits estimate.
See Wolfson Decl., Ex. B (Deetz Dep. 62:16-23).

1 conceal from the Court) is that, because of the nature of boxing promotion, where
2 the top level fighters carry the sport, non-championship caliber boxers fight in the
3 same events and on the same fight cards as Championship Caliber Boxers. Boxing
4 events are planned and driven by the Championship Caliber Boxers, but non-
5 championship caliber boxers appear on the undercard. Therefore, in order to
6 correctly calculate the lost profits from boxing operations, it is essential to allocate
7 the proportionate share of revenues and expenses from those events to the non-
8 championship caliber boxers who participate in the event. Moreover, Mr. Deetz's
9 analysis separates out the profits and losses from each category of boxer and
10 therefore provides all the necessary information to evaluate what profits result from
11 Championship Caliber Boxers vs. non-championship caliber boxers. Finally,
12 because non-championship caliber boxers are an expense item (*i.e.*, the revenue
13 attributable to them is less than the costs attributable to them), failing to include
14 them in the calculation would increase the lost profits calculation and result in
15 higher damages. Accordingly, this is no basis to exclude Mr. Deetz's testimony.

16 Third, Mr. Deetz's application of the criteria created by Dr. Kneuper is
17 entirely proper. Mr. Deetz is not offering an opinion outside his area of expertise.
18 Indeed, he is not offering an opinion on the definition of Championship Caliber
19 Boxers at all. He is simply applying the criteria developed by Dr. Kneuper to data
20 he assembled for each of the years in question. Moreover, Defendants' contention
21 that Mr. Deetz categorized 47 separate boxers as Championship Caliber Boxers that
22 Dr. Kneuper did not is simply not true. This is a made-up statistic designed to try
23 and discredit Mr. Deetz. But, even if it was true, it would only go to the weight of
24 Mr. Deetz's opinions, not their admissibility.

25 **DEFENDANTS' ARGUMENTS**

26 Mr. Deetz's damages opinions consist of a "before-and-after" analysis that
27 compares a time period he assumes was unaffected by Defendants' alleged bad acts
28 (2014)—*i.e.*, a "benchmark" year of profits—against a time period GBP alleges was

1 affected by those acts (2015 and beyond), and then concludes damages are the
2 difference between what GBP “should have” made in the latter time period, and
3 what it actually made in those years. *See* Wolfson Decl., Ex. B (Deposition of Gene
4 Deetz (“Deetz Dep.”) 326:6-9); *id.*, Ex. A (Deetz Rep. ¶¶ 22, 48-51). Mr. Deetz
5 also makes assumptions about GBP’s profits in the future and makes conclusions
6 about how and to what extent he believes future profits were lost due to Defendants’
7 acts. *See, e.g.*, Wolfson Decl., Ex. B (Deetz Dep. 18:10-24, 233:6-234:2; *id.*, Ex. A
8 (Deetz Rep. ¶¶ 48-9). Based on this approach, Mr. Deetz concludes that, if
9 Defendants’ bad acts (tying, exclusive television contracts, etc.) ceased before the
10 end of this lawsuit, then GBP will have lost between \$7-8.4 million. *See* Wolfson
11 Decl., Ex. A (Deetz Rep. ¶¶ 22, 54). He also concludes that, if Defendants do not
12 cease their acts and/or their acts created some sort of “permanent shift” in the
13 industry, then GBP will allegedly lose \$20 million, total, over time. *Id.* at ¶¶ 22,
14 53.² These opinions are flawed and warrant exclusion under Fed. R. Evid. 402 and
15 403 because they fail to disaggregate Golden Boy’s alleged damages, they are based
16 on theories of liability never alleged by Golden Boy, and because they exceed the
17 scope of Mr. Deetz’s expertise.

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21 ² Notably, the acts that GBP complains about in this case *have* ceased.
22 Defendants removed the alleged “tie-out” clause in their management and advisory
23 contracts, as well as the exclusivity provisions in their television contracts, in the
24 first half of 2016. *See* Dkt. 147 (Alan Haymon’s Motion for Summary Judgment) at
25 11 (noting that Defendants waived the exclusivity provisions in their management
26 and advisory agreements in the first half of 2016) and Dkt. 158 (The Haymon
27 Entities’ Motion for Summary Judgment) at 8 n.4 (same for Defendants’ television
28 agreements). Thus, given that neither Mr. Deetz nor GBP has provided any
evidence that there has been a “permanent shift” in the industry, *see* Wolfson Decl.,
Ex. B (Deetz Dep. 302:10-304:10 and 314:10-315:19), this case is really just about
\$7-8.4 million.

1 **I. Mr. Deetz did not disaggregate his damages estimates by liability theory**

2 The first reason Mr. Deetz's opinions must be excluded is that he does not
3 offer separate damages estimates for each liability theory.

4 A. Antitrust Plaintiffs Must Disaggregate Damages By Liability Theory In
5 Order To Avoid Jury Speculation And Error

6 A plaintiff's damages methodology must be capable of "segregat[ing] the
7 losses, if any, caused by acts which were not antitrust violations from those that
8 were." *City of Vernon v. S. California Edison Co.*, 955 F.2d 1361, 1372 (9th Cir.
9 1992). This is because proof of the *amount* of damage is distinct from causation,
10 and Plaintiffs must therefore prove in a reasonable manner the link between "the
11 injury suffered and the illegal practices of the defendants." *Id.* at 1371 (citing *MCI*
12 *Commc'ns Corp. v. Am. Tel. & Tel. Co.*, 708 F.2d 1081, 1161 (7th Cir. 1983)). A
13 plaintiff's antitrust damages model must thus differentiate between the damages it
14 estimates for each liability theory the plaintiff alleges, a task that is called
15 "disaggregation." *Id.* at 1372-73 (affirming summary judgment for defendant
16 because plaintiff lacked evidence of damages due to their expert's failure to
17 disaggregate lost profits damages between different alleged antitrust liability
18 theories).³

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21 ³ Even if Plaintiffs were not required to disaggregate between their own liability
22 theories based on Defendants' conduct, Mr. Deetz did not even attempt to control
23 for additional or other reasons that GBP's profits might have dipped following 2014.
24 For example, in 2014 (and before), GBP promoted Floyd Mayweather, the highest-
25 earning boxer in history. In 2015, however, Mr. Mayweather instead chose GBP's
26 rival, Top Rank, to promote his fight with Manny Pacquiao, which ended up being
27 the highest-grossing boxing bout in history, taking in revenue in excess of \$500
28 million. *See* Wolfson Decl., Ex. D (Expert Rebuttal Report of Michael P. Smith,
Ph.D, dated September 27, 2016 ("Smith Rep.") ¶ 25 n.33); *see also* Wolfson Decl.,
Ex. B (Deetz Dep. 80:2-81:15). Despite this lost opportunity, and that GBP does not
allege it occurred due to any wrongdoing by Defendants, Mr. Deetz concluded that
he properly included the \$2.2 million in profits GBP obtained from promoting Mr.

1 “Disaggregation” is necessary, particularly in antitrust cases, because a jury
2 cannot award damages for lawful competitive behavior. *Litton Sys., Inc. v.*
3 *Honeywell, Inc.*, 1996 WL 634213, at *2 (C.D. Cal. July 24, 1996) (Where multiple
4 business practices of a defendant are challenged, “it is incumbent upon an antitrust
5 plaintiff to disaggregate its damage model except where it is impossible to do so.”).
6 Thus, the jury must be able to sift through damages estimates for each liability
7 theory the plaintiff presents, or else be forced to engage in an impermissible
8 guessing game as to the correct damages number. *In re IBM Peripheral EDP*
9 *Devices Antitrust Litig.*, 481 F. Supp. 965, 1013–14 (N.D. Cal. 1979), *aff’d sub nom.*
10 *Transamerica Computer Co. v. IBM Corp.*, [1982–83 Trade Cases ¶ 65,218], 698
11 F.2d 1377 (9th Cir. 1983), *cert. denied*, 464 U.S. 955 (1983) (damage study found
12 unduly speculative where it failed to segregate damages according to various
13 challenged practices). *See also MCI Commc’ns Corp. v. Am. Tel. & Tel. Co.*, 708
14 F.2d 1081, 1163 (7th Cir. 1983) (vacating damages award as speculative because
15 “the jury was left with no way to adjust the amount of damages” in light of the
16 jury’s findings on liability); *Image Tech.*, 125 F.3d at 1224 (similar).

17 Failure to disaggregate damages—including specifically with respect to lost
18 profits analyses such as the one Mr. Deetz presents here—requires exclusion. *Id.*
19 (excluding lost profits analysis on these grounds); *Magnetar Tech. Corp. v. Intamin,*
20 *Ltd.*, 801 F.3d 1150, 1159-60 (9th Cir. 2015) (affirming summary judgment for lack
21 of damages evidence because of, *inter alia*, the plaintiffs’ failure to “separate the
22 losses suffered as a result of [defendant’s] conduct from the total losses suffered by
23 [plaintiff],” making it “impossible for a jury to estimate the lost profits attributable
24 to [defendant’s] conduct”); *Infusion Res., Inc. v. Minimed, Inc.*, 351 F.3d 688, 695-

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27 Mayweather in 2014 in his benchmark Income from Boxing Operations number. *Id.*
28 at 82:4-83:14.

1 96 (5th Cir. 2003) (same, for lost profits report that was incapable of showing the
2 specific damages attributable to each of defendants' alleged bad acts).

3 Particularly instructive on this point is the Ninth Circuit's opinion in *City of*
4 *Vernon*, where the damages theory at issue was the "only possibly admissible
5 damage study...before the court." 955 F.2d at 1372. Like GBP, the plaintiff in *City*
6 *of Vernon* "[did not] attempt or offer to make corrections" to its flawed analysis,
7 despite multiple discussions with the defendant. *Id.* This was problematic because
8 "[t]hat study failed to segregate the losses, if any, caused by acts which were not
9 antitrust violations from those that were." *Id.* Observing that the plaintiff's refusal
10 to segregate damages by liability "might well have been because [the plaintiff's]
11 deeply flawed study is the handmaiden of its equally flawed theory," the Ninth
12 Circuit excluded the evidence entirely. *Id.*

13 B. Mr. Deetz Does Not Disaggregate Damages At All, Despite Multiple
14 Opportunities To Do So

15 Contrary to this law, Mr. Deetz does not differentiate between GBP's
16 different liability theories and instead concludes that the damages he estimates are
17 due to all. *See* Wolfson Decl., Ex. A (Deetz Rep. ¶¶ 53, 54); *see also id.*, Ex. B
18 (Deetz Dep. 106:5-110:12, 111:2-112:21, 113:9-115:19, 116:5-118:25). In his own
19 words, Mr. Deetz simply accepted Dr. Kneuper's theories in full and estimated
20 damages based on the entirety of those theories without identifying specific events
21 or theories of harm for specific portions of the damages estimate. *Id.* at 297:16-
22 298:10; *id.* at 341:10-345:2 ("We've talked about the fact that I don't identify a
23 specific event ... and why I don't identify a specific event ... And I disagree that
24 you don't [*sic.*] have to do that or should be able do that.") and 343:15-20 ("I
25 adopted [the] Kneuper [Report] in total, and I'd have to see all the facts and
26 circumstances in a different report by Dr. Kneuper, or some other instruction, that
27 gave me all the facts and circumstances to consider changing [my opinions]").
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1 For example, Mr. Deetz does not identify any specific boxers that GBP was
2 unable to promote due to Defendants' alleged tie-outs. *See* Wolfson Decl., Ex. B
3 (Deetz Dep. 103:11-104:1, 106:5-109:4, 338:16-23). Similarly, Mr. Deetz does not
4 identify any specific bouts GBP was unable to promote due to Defendants' alleged
5 tie-out or refusals to deal. *Id.* at 338:7-15, 338:25-339:7, 341:10-345:2 ("We've
6 talked about the fact that I don't identify a specific event ... and why I don't identify
7 a specific event ... And I disagree that you don't [*sic.*] have to do that or should be
8 able to do that."). And Mr. Deetz does not identify which networks he believes would
9 have signed deals with, or paid license fees to, GBP had Defendants not entered into
10 their exclusive television contracts. *Id.* at 111:2-112:7 (testifying that he assumed
11 the GBP's failure to renew its contract with Fox Deportes was attributable to
12 Defendants' conduct, and that even if the real reason for the non-renewal was that
13 GBP turned down the contract, his damages opinion would not change because Dr.
14 Kneuper's opinion said otherwise), 296:4- 297:15 (testifying that his analysis did
15 not distinguish between Fox entities and that he did not recall asking anyone at GBP
16 whether Defendants' and GBP's relevant contracts were with the same Fox entities),
17 150:9-151:12 (admitting that his damages analysis does not identify any harm
18 specific to being excluded from particular networks).

19 This approach is fundamentally problematic because GBP's liability theories
20 imply dramatically different effects from one another. For example, the harm GBP
21 claims from its exclusive dealing liability theory is that Defendants' PBC series
22 changed the dynamic such that GBP was unable to obtain license fees from basic
23 television and "free" cable networks. Dkt. 218 (Plaintiffs' Opposition to the
24 Haymon Entities' Motion for Summary Judgment) ("Opp. To Entities' MSJ"), at
25 11-12. But Mr. Deetz's analysis does not separately calculate the license fees GBP
26 would have allegedly been able to obtain in the but-for world. *See generally*
27 Wolfson Decl., Ex. A (Deetz Rep. ¶¶ 48-51, 53-54). Given that GBP claims it aired
28 approximately two dozen shows per year on "free" television before 2015, and only

1 obtained approximately \$40,000 in license fees, maximum, per show (which
2 annualizes to about \$1.2 million),⁴ this averages out to far, far less in “lost license
3 fees” than the \$7-20 million Mr. Deetz estimates in total lost profits damages. Yet,
4 because Mr. Deetz does not break out those “lost license fees”—or, more
5 specifically, the total profits GBP obtained from license fees on “free” TV before
6 2015—from his broader conclusions, the jury will be left to simply guess those
7 numbers if it concludes that only the alleged exclusive dealing was actually illegal.
8 This is a classic disaggregation problem requiring exclusion.

9 As another example, the tying theory depends on harm stemming from GBP’s
10 supposed inability to promote boxers that were in contract with Defendants. *See*,
11 *e.g.*, Wolfson Decl., Ex. F (Kneuper Rep.) ¶¶ 78-80 (describing Defendants’ key,
12 alleged exclusionary practice as “locking up” the majority of championship-caliber
13 boxers via contractual provisions and “refusing (with few exceptions) to allow
14 Haymon-controlled Championship-Caliber boxers to participate in fights
15 represented by” key competing promoters including Golden Boy promotions). But
16 Mr. Deetz does not specify what amount of GBP’s supposed lost profits stemmed
17 from its inability to promote such boxers, *see* Wolfson Decl., Ex. B (Deetz Dep.
18 312:18-320:25), which is important given that Mr. Deetz himself admitted GBP
19 makes vastly different amounts of money depending on the specific boxers it
20 promotes. *See, e.g.*, Wolfson Decl., Ex. B (Deetz Dep. 77:13-78:11 (testifying that
21 \$2.2 million out of Golden Boy’s \$5.5 million 2014 operating income, or 40%, was
22 attributable to Floyd Mayweather), *See also* Wolfson Decl., Ex. C (Revised Exhibit 3
23 to the Deetz Rep. at 7) (over \$4.4 million of Plaintiffs’ 2015 net income out of
24 Golden Boy’s \$4.7 million 2015 net income from boxing operations, or almost 95%,
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26 ⁴ *See* Wolfson Decl., Ex. E (Deposition of Roberto Diaz (“Diaz Dep.”) 220:1-13
27 (recalling that GBP received a license fee of “maybe about [\$]40,000” per show on
28 Fox Sports 1); *id.*, Ex. F (Expert Report of Robert Kneuper, Ph.D., dated September
6, 2016 (“Kneuper Rep.”) ¶ 93, Table 5).

1 was attributable to Canelo Alvarez); *id.* at 10 (in 2016, operating income attributable
2 to Canelo Alvarez was nearly \$3 million and its total *net* income for the same year
3 was only \$2.8 million). If the jury concludes that Defendants are liable only for
4 tying, it will have no basis to calculate the damages specifically attributable to the
5 alleged tying, which is a separate act from the exclusive dealing. *See Top Rank, Inc.*
6 *v. Haymon*, No. CV154961JFWMRWX, 2015 WL 9948936, at *5 (C.D. Cal. Oct.
7 16, 2015).

8 Given this failure to disaggregate, Mr. Deetz’s damages opinions must be
9 excluded; otherwise, the jury will necessarily need to engage in a guessing game as
10 to Plaintiffs’ damages for each liability theory without proof as to their actual
11 amount. *See City of Vernon*, 955 F.2d at 1372-73 (holding that Plaintiff’s damages
12 study was properly excluded when there was no information that would enable the
13 jury to reasonably estimate Plaintiff’s injury without speculation). Neither the
14 Supreme Court nor the Ninth Circuit permit such a result. *See Comcast Corp.*, 133
15 S. Ct. at 1433; *City of Vernon*, 955 F.2d at 1372-73.

16 **II. Mr. Deetz’s analysis claims lost profits for both CCBs and non-CCBs,**
17 **even though GBP’s case is only about CCBs**

18 As the Supreme Court recently made clear, “any model supporting a
19 plaintiff’s damages case must be consistent with its liability case, particularly with
20 respect to the alleged anticompetitive effect of the violation.” *Comcast Corp. v.*
21 *Behrend*, 133 S. Ct. 1426, 1433 (2013) (citing *Image Technical Servs., Inc. v.*
22 *Eastman Kodak Co.*, 125 F.3d 1195, 1224 (9th Cir. 1997)). Although *Comcast* was
23 a case about class certification, the Ninth Circuit has been similarly clear for
24 decades that this requirement applies to all stages of antitrust cases. *Image Tech.*,
25 125 F.3d at 1224 (excluding damages opinion that did not match the plaintiff’s
26 antitrust liability theory).

27 According to Mr. Deetz, his “Income from Boxing Operations” metric (which
28 is not a line item in GBP’s financials) is an attempt at isolating just those profits

1 GBP made from its promotional activities. *See* Wolfson Decl., Ex. B (Deetz Dep.
2 187:11-21). Mr. Deetz excludes corporate overhead from this metric, as well as
3 profits and losses he claims are not directly attributable to promotion itself. *Id.* at
4 186:18-190:24. Included in this metric, however, are *all* of GBP's promotion-
5 related profits and losses, including from boxers that Mr. Deetz claims are not
6 CCBs.

7 This inclusion is notable because, throughout his report, Mr. Deetz
8 acknowledges GBP only alleges it was foreclosed from promoting CCBs in the
9 Covered Period. *See* Wolfson Decl., Ex. A (Deetz Rep. ¶¶ 20, 35, 39, 40). GBP has
10 never claimed it was unable to attract non-CCBs to enter or maintain promotion
11 contracts with the company. *See generally* Dkt. 95 (SAC). More importantly, GBP
12 has not offered allegations or evidence regarding supposed relevant non-CCB
13 management or promotion market(s); how Defendants have or could ever obtain
14 market power in such markets; or how there has been or ever could be harm to
15 competition in any non-CCB markets due to Defendants' acts. *See generally*
16 Wolfson Decl., Ex. F (Kneuper Rep. ¶¶ 55-66 and 95-97). Indeed, GBP's liability
17 theories entirely hinge on the CCB definition; without it, the claims fall apart. Dkt.
18 147 (Alan Haymon's Motion for Summary Judgment) at 17-18. Mr. Deetz notes
19 GBP's allegations are that it was precluded from promoting CCBs, and that the
20 separate economic opinions on which he relies (*i.e.*, from Dr. Kneuper) focus solely
21 on market definition, market power, and supposed harm to competition in CCB-
22 related markets. *See* Wolfson Decl., Ex. A (Deetz Rep. ¶¶ 9, 13, 18, 34, 38, 48).
23 Mr. Deetz never identifies any allegations, proffered expert opinions, or lay
24 evidence regarding non-CCB-related market definition or market power. *See*
25 *generally id.* Nor does he—because he cannot, given the complete lack of
26 allegations or evidence on the point—identify any supposed harm to competition in
27 any alleged non-CCB market. *Id.*

1 Including non-CCB-related profits and losses in the damages analysis thus
2 requires Mr. Deetz to deviate from GBP's liability theories in multiple, important
3 ways. For example, the evidence is that, before 2015, GBP received *de minimis*
4 license fees for its non-CCB-focused boxing series on Fox Sports 1, and that it never
5 stopped receiving substantial license fees for its CCB bouts. Wolfson Decl., Ex. E
6 (Diaz Dep. 206:10-22 (testifying that top level fighters "who had outgrown Fox
7 Sports 1" moved onto fights televised on another network or premium channel),
8 208:3-24 (testifying that the Fights on Fox Sports 1 were more of a "developmental
9 level for ... young fighters" to help them "obtain that stature of your bigger
10 network, your bigger license fee, your bigger exposure [*sic.*]"), 220:1-13 (recalling
11 that GBP received a license fee of "maybe about [\$]40,000" per show on Fox Sports
12 1)); *id.*, Ex. G (Deposition of Eric Gomez ("Gomez Dep.") 253:13-22 (testifying
13 that GBP often received \$400,000 to \$500,000 for Showtime fights), 313:23-315:10
14 (testifying that Showtime fights are second to H.B.O. in terms of profitability)); *id.*,
15 Ex. H (Deposition of Julio Ramirez ("Ramirez Dep.") 107:20-108:13 (testifying that
16 he understands pay-per-view fights were historically and remain GBP's most
17 profitable bouts, both before and during the covered period)). The allegations in this
18 case are that only CCB bouts were affected by the supposed anticompetitive acts;
19 nevertheless, Mr. Deetz assumes, by including non-CCBs in his analysis and income
20 metrics, that GBP has been harmed by making less—or, rather, losing more—than
21 before ***on non-CCB bouts***. *See generally* Wolfson Decl., Ex. A (Deetz Rep., Ex. 3).

22 Similarly, Mr. Deetz justified his inclusion of non-CCB-related profits and
23 losses in Income from Boxing Operations by arguing that GBP has been less able to
24 attract new talent to its roster due to Defendants' alleged acts. Wolfson Decl., Ex.
25 (Deetz Dep. 66:11-69:3). Nowhere is this liability theory mentioned in GBP's
26 operative complaint. *See generally* Dkt. 95 ("SAC"). Nor does Dr. Kneuper (or any
27 other proposed Plaintiff expert) offer opinions about the definition of a non-CCB
28 market, Defendants' supposed power or likelihood of obtaining power in such a

1 market, or harm to competition in such a market. *See generally* Wolfson Decl., Ex.
2 F (Kneuper Rep.). Mr. Deetz’s explanation for the non-CCB inclusion therefore has
3 no support in the liability theories actually articulated in the case.

4 Given this CCB focus, Mr. Deetz’s damages methodology is incongruous
5 with the claims GBP hopes to prove at trial. Mr. Deetz does not segregate out
6 GBP’s lost profits from promoting CCB boxers; instead, he looks at GBP’s total
7 finances—which include its activities with respect to non-CCBs—and then makes
8 assumptions and conclusions based on the combined CCB and non-CCB finances.
9 *See* Wolfson Decl., Ex. A (Deetz Rep., Exs. 3 and 5). This presents damages
10 numbers divorced from GBP’s liability theories because, as Mr. Deetz admits, they
11 assume (a) losses from decreased opportunities to promote CCBs, *and* (b) losses
12 from decreased opportunities to bring on non-CCBs. *See* Wolfson Decl., Ex. B
13 (Deetz Dep. 19:18-20:5, 72:20-73:3, 322:18-324:10). Furthermore, the non-CCB
14 damages numbers cannot be segregated out from the broader theory because they
15 form an inextricable part of Mr. Deetz’s benchmark profits from 2014, against
16 which all future profits are compared. *See* Wolfson Decl., Ex. B (Deetz Dep. 316:2-
17 11).

18 For these reasons, Mr. Deetz’s damages methodology is fundamentally
19 flawed and must be excluded, because it does not track the liability theories in the
20 case.⁵ *See, e.g., Prepaid Wireless Servs., Inc. v. Sw. Bell Wireless, Inc.*, 2002 WL

21
22 ⁵ As discussed below, GBP’s inclusion of non-CCB profits in the damages
23 estimate does not “lower” the overall damages number, as GBP claimed in its
24 summary judgment opposition (and Defendants expect it will claim again here in
25 opposition to this motion *in limine*). *See* Dkt. 217 (Opp. to Entities’ MSJ) at 21. In
26 order to avoid admitting that GBP’s profits with respect to CCBs went up from 2014
27 through the present—and that its losses are entirely due to non-CCB-related
28 promotion activities—Mr. Deetz improperly categorized numerous different boxers
himself as CCBs and non-CCBs. This foundation-less categorization is itself a basis
to exclude Mr. Deetz’s opinions, *see infra*, but also was a transparent attempt to
suggest GBP’s CCB-related profits were extremely high in 2014 and then dropped

1 34367328, at *5 (S.D. Tex. July 23, 2002) (citing *Image Tech.*, 125 F.3d at 1224)
2 (excluding plaintiffs’ damages expert’s opinion because, *inter alia*, the expert’s
3 opinion reflected a theory of liability no longer at issue and, even before that claim
4 was dismissed, the damages theory “did not segregate damages attributable to
5 Defendants’ lawful versus unlawful conduct”).

6 **III. Mr. Deetz classified boxers himself (with great importance to his**
7 **conclusions) even though he is not qualified to do so**

8 Finally, Mr. Deetz’s opinions should be excluded for the independent reason
9 that they purport to opine which boxers qualify as CCBs and which do not. Mr.
10 Deetz is a CPA, not an economist. At his deposition, he admitted he was
11 unqualified to opine on what does or does not make a boxer “Championship-
12 Caliber,” and he further admitted that he performed no such substantive analysis.
13 *See* Wolfson Decl., Ex. B (Deetz Dep. 41:18-42:12; 44:2-9; 88:7-90:7).
14 Nevertheless, Mr. Deetz himself categorized boxers as either CCBs or non-CCBs
15 for the purpose of his damages analysis. *Id.* at 322:18-323:5.

16 An expert must have the specific expertise to opine on issues requiring expert
17 knowledge. *See Gable v. Nat’l Broad. Co.*, 727 F. Supp. 2d 815, 833 (C.D. Cal.
18 2010), *aff’d sub nom. Gable v. Nat’l Broad. Co.*, 438 F. App’x 587 (9th Cir. 2011)
19 (“[A] witness may offer an expert opinion only if he or she draws on some special
20 knowledge, skill, experience, training or education to formulate that opinion...
21 However, the opinion must be an expert opinion (that is, an *opinion informed by the*
22 *witness’ expertise*) rather than simply an opinion broached by a purported expert.”)
23 (internal citations and quotations omitted). Put differently, an expert in one area
24 may not provide expert testimony on issues outside of their expertise. *See White v.*
25 *Ford Motor Co.*, 312 F.3d 998, 1008–09 (9th Cir. 2002) (“A layman, which is what
26 _____
27 precipitously in 2015 and 2016 due to Defendants’ actions. If one excludes non-
28 CCBs from the analysis entirely, the financial data shows that GBP had stable CCB-
related profits from 2014 through the present. *See infra.*

1 an expert witness is when testifying outside his area of expertise, ought not to be
2 anointed with ersatz authority as a court-approved expert witness for what is
3 essentially a lay opinion.”); *see also Apple, Inc. v. Samsung Elecs. Co.*, 2013 WL
4 5955666, at *2 (N.D. Cal. Nov. 6, 2013) (“Under Federal Rule of Evidence 702,
5 experts may not make expert conclusions about areas outside their expertise.”). Any
6 opinions that violate this basic requirement must be excluded. *See Shalaby v.*
7 *Newell Rubbermain, Inc.*, 379 F. App’x 620, 622–23 (9th Cir. 2010) (affirming trial
8 court’s exclusion of plaintiffs’ expert because, *inter alia*, the expert sought to testify
9 as to matters outside the scope of her expertise); *In re Ford Tailgate Litig.*, 2015
10 WL 7571772, at *8 (N.D. Cal. Nov. 25, 2015), appeal dismissed (Feb. 16, 2016)
11 (“These topics are outside the scope of his expertise ... Ford’s motion to exclude
12 Locke’s testimony *must* therefore be granted.”) (emphasis added).

13 Mr. Deetz’s categorization of boxers is important to his overall conclusions
14 because it affected the “trends” one observes in GBP’s finances from Mr. Deetz’s
15 “benchmark” year (2014), through the alleged liability period (2015-present). In his
16 initial report, Mr. Deetz’s categorization of boxers as CCB v. non-CCB showed that
17 GBP was never harmed by Defendant’s alleged conduct. Controlling for the loss of
18 Floyd Mayweather as a client from 2014 to 2015—who generated \$2.2 million in
19 profits for GBP in 2014, but then chose Top Rank instead of GBP to promote his
20 famous 2015 fight against Manny Pacquiao—GBP’s finances showed that it made
21 **more** money on CCBs each year from 2014 through the present, and that its losses
22 were entirely due to non-CCBs. Wolfson Decl., Ex. A (Deetz Rep., Ex. 3); *see also*
23 *id.*, Ex. D (Smith Rep. ¶ 35 (“[A]ccepting Mr. Deetz’s damages methodology and
24 assumptions, with corrections to focus on the promotion of championship caliber
25 boxers and to control for Mr. Mayweather’s departure, Golden Boy has not been
26 damaged as a result of the alleged anticompetitive conduct.”)). Faced with this
27 observation in Defendants’ rebuttal report, Mr. Deetz “revised” his categorizations
28 in a way to suddenly show very different numbers, ones that supposedly

1 demonstrated GBP experienced large losses with respect to CCBs from 2014 to
2 2015. *See generally* Wolfson Decl., Ex. C (Revised Exhibit 3).

3 Besides being an improper supplement to his opening report, the larger
4 problem is that Mr. Deetz's independent determinations of which boxers are and are
5 not CCBs contradicts Dr. Kneuper's conclusions, or makes conclusions about
6 boxers Dr. Kneuper never addressed in his report. Given that Mr. Deetz admitted he
7 does not have the expertise to determine which boxers are appropriately labeled
8 "Championship-Caliber," *see* Wolfson Decl., Ex. B (Deetz Dep. 46:10-21), he
9 insisted that he offered no such opinion and instead claimed that he relied only on
10 Dr. Kneuper's expertise. *Id.* at 20:18-21:9, 27:19-28:11, 28:22-29:19, 39:18-40:14,
11 44:2-8. Nevertheless, Mr. Deetz classified **47 separate boxers** as Championship-
12 Caliber that Dr. Kneuper did not, the majority of those in 2014, his benchmark year
13 (a critical point discussed further in Defendants' Motion *in Limine* No. 2). *See*
14 Wolfson Decl., Ex. I (List Comparing Revised Ex. 3 and Exs. 3 and 4 of the
15 Kneuper Report). *See also* Wolfson Decl., Ex. B (Deetz Dep. 32:13-33:22, 36:11-
16 37:3, 48:10-23, 123:9-127:1 (testifying that his damages analysis classified Alfredo
17 Angulo, Devon Alexander, Sakio Bika, Dierry Jean, Ezekiel Brook, Nihito
18 Arakawa, and Marco Periban as CCBs, but that none of these were considered
19 CCBs in Dr. Kneuper's report)).

20 Mr. Deetz sought to justify these differing classifications by testifying that he
21 considered a different time period than Dr. Kneuper (2014-2016 rather than 2015-
22 2016). *Id.* Even if Mr. Deetz had not already admitted he was unqualified to
23 determine who is a CCB, however, this justification ignored that none of these
24 boxers were included in Dr. Kneuper's list of 2015 CCBs, despite that many of them
25 participated in televised fights in 2015 and despite that, according to Dr. Kneuper,
26 the concept of a Championship-Caliber Boxer did not simply spring into being in
27 2015 (which means that there should have been CCBs in 2014, 2013, and so on).
28 *See, e.g., id.* at 32:13-33:22, 36:11-37:3, 48:10-23. Dr. Kneuper's "objective"

1 criteria do not change from year to year. At the very least, therefore, those boxers
2 Mr. Deetz classified as CCBs in 2014 who fought in a televised bout in 2015
3 presumably should have been included on Dr. Kneuper's 2015 list, yet none of them
4 were. *See generally* Wolfson Decl., Ex. F (Kneuper Rep., Ex. 3).⁶

5 The divergence between Dr. Kneuper's and Mr. Deetz's classifications belies
6 Mr. Deetz's claims at deposition that he was simply applying Dr. Kneuper's
7 methodology to the categorization process. *See* Wolfson Decl. Ex. B (Deetz Dep.)
8 at 20:18-21:9, 27:19-29:19, 44:2-8, 46:10-21. Thus, on this basis alone, Mr. Deetz's
9 opinions must be excluded pursuant to FRE 702 because he himself admits he is
10 incapable of opining as to boxers' CCB status, and his opinions directly contradict
11 the only proffered expert arguably capable of making such an assessment. *See In re*
12 *Ford Tailgate Litig.*, 2015 WL 7571772 at *8 (excluding expert testimony when the
13 expert sought to testify outside the scope of her expertise).

14 A final, critical point is that Mr. Deetz's categorization of 47 boxers as CCBs
15 in the 2014 profits (that Dr. Kneuper did not classify as CCBs even in 2015 or 2016)
16 has important effects on the damages estimates that demonstrate why his
17 unsubstantiated lay opinions must be excluded at trial. As previously noted, Mr.
18 Deetz uses 2014 as a "benchmark" year against which to compare the profits GBP
19 made in 2015, 2016, and beyond. His categorization—and re-categorization, after
20 receiving Defendant's rebuttal expert report—of these boxers artificially inflated
21 Golden Boy's "benchmark" CCB-related profits in 2014. By inflating these
22 numbers, Mr. Deetz was then able to conclude that GBP's subsequent decline in
23 CCB-related profits in 2015 and 2016 was attributable to the alleged anticompetitive

24 ⁶ Moreover, even with respect to 2015 and 2016—years expressly within the
25 scope of Dr. Kneuper's opinions—Mr. Deetz reached different conclusions
26 regarding which boxers were and were not CCBs. For example, Mr. Deetz
27 categorized Alfonso Gomez and James Kirkland as CCBs even though Dr.
28 Kneuper's list of CCBs *for the same year* mentioned neither. *See* Wolfson Decl.,
Ex. B (Deetz Dep. 127:2-137:17).

1 conduct in this case. This also was meant to permit him to dance around the fact
2 that GBP's decline in profits in 2015 and 2016 is due to **non**-CCB-related activities.
3 *Supra* note 3 (GBP's damages theory fails to establish a reasonable "link" between
4 the damages it alleges and *any* of Defendants' alleged misconduct). The
5 categorizations between CCB and non-CCB are thus critical to Mr. Deetz's
6 methodology and he cannot be permitted to play with the categorizations to reach
7 the result he wants, particularly when he admits has no expertise to do so.

8 **IV. CONCLUSION**

9 For the foregoing reasons, the Haymon Defendants request that the Court
10 exclude Mr. Deetz's testimony in its entirety because it is improper expert testimony
11 under Fed. R. Evid. 702 and the *Daubert* standard.

12 **PLAINTIFFS' ARGUMENTS**

13 Plaintiffs' damages analysis relies on accepted accounting methodologies
14 applied by an expert with outstanding credentials. Notably, Defendants do not
15 contend either that Mr. Deetz's lost profits methodology is not an acceptable method
16 of calculating damages, or that Mr. Deetz is not qualified to render such an opinion.
17 Instead, Defendants attack certain specific components of Mr. Deetz's analysis,
18 none of which renders his opinion inadmissible. At most, Defendants' arguments go
19 to the weight of Mr. Deetz's opinions, not their admissibility.

20 **I. "Disaggregation" Is Not a Basis to Exclude Mr. Deetz's Testimony.**

21 Defendants contend that Mr. Deetz's failure to "disaggregate" his damages
22 calculation renders it inadmissible. Defendants are wrong for three reasons. First,
23 Defendants have failed to cite a single case in which a plaintiff's damages expert
24 was excluded before trial on the basis that the expert did not disaggregate damages.
25 Second, there has been no determination that Plaintiffs' damages were caused by
26 Defendants' lawful conduct, as opposed to their unlawful conduct; therefore there is
27 nothing yet to disaggregate. Third, disaggregation is not required where, as here, it
28 would be impractical or impossible to do so.

1 A. The Alleged Failure to Disaggregate Damages is Not a Basis to
2 Exclude Expert Testimony in its Entirety.

3 The doctrine of strict disaggregation of damages has been rejected by all
4 courts to consider it. *See MCI Communications Corp. v. AT&T*, 708 F.2d 1081,
5 1161 (7th Cir. 1983). Importantly, a plaintiff need not “disaggregate” damages
6 caused by different types of unlawful conduct. *Id.* Disaggregation is only necessary
7 where there has been a determination by the Court or the jury that some of the
8 conduct causing damage to the plaintiff was lawful. *Image Tech. Services, Inc. v.*
9 *Eastman Kodak Co.*, 125 F.3d 1195, 1224 (9th Cir. 1997). Even then,
10 disaggregation is not required where it would be impractical or impossible to do so.
11 *See Bonjourno v. Kaiser Aluminum & Chemical Corp.*, 752 F.2d 802, 813 (3d Cir.
12 1984); *LePage’s Inc. v. 3M*, 324 F.3d 141, 166 (3d Cir. 2003). For this reason, a
13 failure to disaggregate damages is rarely, if ever, a basis to exclude an expert’s
14 testimony on a motion in limine. *In re High-Tech Employee Antitrust Litigation*,
15 2014 WL 1351040, *18, n. 38 (N.D. Cal. April 4, 2014) (Ninth Circuit cases that
16 address disaggregation do not address the admissibility of an expert’s testimony
17 “under *Daubert* or otherwise”).

18 Defendants cite a series of cases for the proposition that disaggregation of
19 damages is required. Notably, not a single one arose in the context of a motion in
20 limine to exclude evidence at trial.

21 In *City of Vernon v. Southern California Edison Co.*, 955 F.2d 1361, 1371-
22 1373 (9th Cir. 1992), the issue of disaggregation was presented to the Court on an
23 appeal from the trial court’s ruling granting summary judgment in favor of the
24 defendant. The *City of Vernon* Court determined that the trial court correctly
25 granted summary judgment on all but one of the plaintiff’s claims. *Id.* at 1373. The
26 *City of Vernon* Court then went on to consider whether the plaintiff had raised a
27 triable issue of fact regarding the recovery of damages for that claim. *Id.* at 1371.
28 Having determined that only one of the plaintiff’s claims could survive scrutiny, the

1 *City of Vernon* Court ruled that the plaintiff's damages evidence was insufficient to
2 raise a triable issue of fact on the one remaining claim of wrongdoing. *Id.* at 1373.
3 The question was not whether the study was admissible, but rather whether it was
4 sufficient to sustain the claim. The Court ruled it was not sufficient. *Id.* Each of
5 *Magnetar Tech Corp. v. Intamin, Ltd.*, 801 F.3d 1150 (9th Cir. 2015) and *Infusion*
6 *Res., Inc. v. Minimed, Inc.*, 351 F.3d 688 (5th Cir. 2003) were also summary
7 judgment cases.⁷

8 In each of *Litton Systems, Inc. v. Honeywell, Inc.*, 1996 WL 634213 (C.D.
9 Cal. July 24, 1996), *MCI Communications* and *Image Tech. Services*, the issue of
10 disaggregation was presented in connection with post-trial motions. In each of those
11 cases, the defendant argued that, because the jury had determined that only some of
12 the defendant's conduct was wrongful, the evidence of aggregated damages was
13 insufficient to support a verdict on the remaining claims. *Litton Systems*, 1996 WL
14 634213, at *3; *MCI*, 708 F.2d at 1174; *Image Tech*, 125 F.3d at 1224. Indeed, in
15 *Image Tech*, the issue was whether a damages award based on a failed
16 monopolization claim could nevertheless survive. *Id.* Notably, the Court in each
17 case remanded the issue for a retrial on the issue of damages. *Id.*

18 In *In re IBM Peripheral EDP Devices Antitrust Litig.*, 481 F. Supp. 965, 974
19 (N.D. Cal. 1979), the Court addressed the damages issue only in dicta in deciding
20 the case pursuant to stipulation after a hung jury. Notably, before considering the
21 question of damages, the Court had already ruled that the plaintiff had failed to
22 prove liability on any theory. *Id.* at 1010. The Court simply went on to note that,
23
24

25 ⁷ Defendants' extensive reliance on cases involving the granting of summary
26 judgment for failure to prove damages demonstrates that this motion is nothing more
27 than a disguised summary judgment motion. Pursuant to the Court's Amended
28 Scheduling and Case Management Order (Dkt. 113), the Court should therefore not
hear or resolve this motion.

1 even if some liability theory were to have survived, the evidence of damages was
2 insufficient to sustain a verdict. *Id.*

3 Accordingly, not a single case cited by Defendants applies the rules of
4 disaggregation in the context of a pretrial *Daubert* challenge to an expert report.
5 And, of course, this only makes sense. Because disaggregation only becomes
6 relevant if and when the Court or the jury determines that some form of lawful
7 conduct contributed to Plaintiffs' damages, the alleged failure to disaggregate
8 damages can only be evaluated once such a determination is made. Without
9 knowing what supposedly lawful conduct allegedly contributed to Plaintiff's
10 damages, there is no basis to disaggregate anything. That is a determination that
11 will be made, if at all, at trial. Only then will the parties and Court be able to
12 evaluate whether Mr. Deetz's damages model improperly includes damages
13 resulting from lawful conduct.

14 B. There Has Been No Determination that Plaintiffs' Damages Were
15 Caused by Lawful Conduct.

16 Even under the cases cited by Defendants, disaggregation of damages is only
17 required where there has been a determination, either by the Court or a jury, that
18 certain of Defendants' actions were lawful and those lawful actions contributed to
19 Plaintiffs' harm. *See e.g., MCI*, 708 F.2d at 1161; *Image Tech Servs.*, 125 F.3d at
20 1224. Here, there has been no determination that Defendants engaged in lawful
21 conduct, nor has there been a determination that Plaintiffs' damages were caused, at
22 least in part, but such lawful conduct. Accordingly, Mr. Deetz's alleged failure to
23 disaggregate his damages model at this point cannot be a basis to exclude his
24 testimony.

25 C. Disaggregation Is Not Required in this Case.

26 Even if the Court or the jury were to conclude that certain of Defendants'
27 actions were lawful, Plaintiffs are not required to disaggregate their damages where
28

1 it would be impossible or impractical to do so. *Bonjourno*, 752 F.2d at 813. That is
2 likely to be the case here.

3 The undisputed testimony is that a boxing promoter needs both boxers and
4 television outlets available to it in order to have a successful business. Sbardellati
5 Decl., Ex. 5, p. 19:18-20:5; Declaration of Gary Shaw filed in support of Plaintiffs’
6 Opposition to Motions for Summary Judgment, Dkt. 235 (“Shaw Decl.”), ¶ 44;
7 Declaration of Elizabeth Sbardellati in support of Plaintiffs’ Opposition to
8 Defendants’ Motion in Limine No. 1 (“Sbardellati Decl.”), Ex. 1, ¶¶ 34-35. Stated
9 in economic terms, these are the necessary inputs for the boxing business. *Id.*, ¶ 36.

10 Plaintiffs allege that Defendants have engaged in unlawful activities that have
11 foreclosed Plaintiffs’ ability to sign boxers and obtain available dates for television
12 broadcasts for their fights. Because both pieces are necessary for a successful
13 business, a determination that, for example, Defendants’ conduct with respect to
14 boxers was lawful would not alter the conclusion that Defendants’ unlawful conduct
15 with respect to television networks caused all of the damage to Plaintiffs as stated in
16 Mr. Deetz’s report. Even if Plaintiffs could sign boxers, if they did not have any
17 available television networks to broadcast boxing events featuring those boxers,
18 Plaintiffs would still be precluded from successfully promoting those boxers. As a
19 result, the dramatic decline in the number of events and number of boxers promoted
20 by Golden Boy would remain. In this way, disaggregation of damages in this case is
21 neither practical nor possible.

22 *LePage’s*, 324 F.3d at 166 is instructive. There, the Court considered a
23 Section 2 monopolization claim arising from exclusionary conduct and allegedly
24 unlawful bundling activities. *Id.* at 146-47. The Defendant argued that the award of
25 damages was improper because it did not disaggregate between lawful and unlawful
26 conduct. *Id.* at 166. The Court disagreed; holding that, because the defendants’
27 plan, taken as a whole, was found to violate Section 2, disaggregation of damages
28 was neither possible nor required. The same is true here. Plaintiffs contend that

1 Defendants entire business model is anticompetitive and an attempt to monopolize
2 boxing promotion. Plaintiffs are entitled to claim all of their lost profits that
3 resulted from the harm caused by those anticompetitive acts.

4 **II. Mr. Deetz Properly Included Non-Championship Caliber Boxers in His**
5 **Lost Profits Calculation.**

6 r. Deetz employs a “before and after” or “but-for” model for calculating lost
7 profits caused by Defendants’ conduct. Sbardellati Decl., Ex. 5, p. 14:19-15:3. This
8 is a generally recognized method for calculating lost profits damages. Sbardellati
9 Decl., Ex. 4, ¶ 15. In applying this method, the expert calculates profits before the
10 wrongful conduct began and compares those profits to the profits earned after the
11 defendant engaged in the wrongful conduct. *Id.*, ¶ 17.

12 Although Defendants concede that Mr. Deetz’s methodology is a well-
13 accepted method of calculating damages, Defendants contend that Mr. Deetz’s
14 application of that methodology is fatally flawed because he includes non-
15 championship caliber boxers in his calculations. Specifically, Defendants contend
16 that because Plaintiffs do not allege any unlawful conduct with respect to non-
17 championship caliber boxers, they cannot include those boxers in any damage
18 calculation. As Mr. Deetz has explained, Defendants are wrong.

19 First, Defendants’ argument ignores the reality of the boxing promotion
20 business that Championship Caliber Boxers drive revenue for the sport. Shaw
21 Decl., ¶ 4; Kneuper Report, ¶¶ 20-23. Championship Caliber Boxers are the fighters
22 that headline the event and fight on the televised portions of the card. Shaw Decl., ¶
23 4. However, each event also includes fights involving non-championship caliber
24 boxers. *Id.*; Sbardellati Decl., Ex. 6, p. 63:1-24; Sbardellati Decl., Ex. 7, p. 255:8-
25 13. These fighters participate in the undercards as a way of developing their careers
26 and hopefully one day becoming a Championship Caliber Boxer. Sbardellati Decl.,
27 Ex. 6, p. 152:16-156:24; Shaw Decl., ¶¶ 4, 26.

1 Because of this business model, it is essential that any lost profits calculation
2 include the revenues and costs attributable to these developmental opportunities.
3 *See* Declaration of Gene Deetz in Support of Plaintiffs' Oppositions to Defendants'
4 Motions for Summary Judgment, Dkt. 237 ("Deetz Decl."), ¶¶ 19-20. The revenues
5 and costs attributable to these non-championship caliber fighters are in the nature of
6 research and development expenses. *Id.*, ¶ 20. Failing to include these fighters in
7 the analysis would therefore improperly skew the lost profits analysis by eliminating
8 a significant cost center. *Id.*

9 Second, Mr. Deetz's analysis actually confirms that Plaintiffs have been
10 harmed by the foreclosure of their ability to promote Championship Caliber Boxers.
11 Mr. Deetz's analysis demonstrates that the promotion of non-championship caliber
12 boxers is a money losing proposition. Sbardellati Decl., Ex. 3 (Revised); Deetz
13 Decl., ¶¶ 19-20. Indeed, Mr. Deetz's analysis reflects that in 2014, Golden Boy lost
14 \$1,343,658 from the promotion of non-championship caliber boxers, in 2015, it lost
15 \$1,207,285 from the promotion of non-championship caliber boxers, and through
16 June 2016, Golden Boy had lost \$679,315 from the promotion of non-championship
17 caliber boxers. Sbardellati Decl., Ex. 3 (Revised).

18 The fact that Plaintiffs consistently lose money from the promotion of non-
19 championship caliber boxers demonstrates that they are harmed by Defendants'
20 actions. Without the ability to promote new Championship Caliber Boxers,
21 Plaintiffs are left with only the money-losing business of promoting non-
22 championship caliber boxers. Accordingly, the inclusion of non-championship
23 caliber boxers in Mr. Deetz's analysis is fully consistent with Plaintiffs' theory of
24 damages.

25 Third, because promotion of non-championship caliber boxers is a money
26 losing proposition, failing to include these losses in any lost profits analysis would
27 actually result in higher damages for Plaintiffs. In the promotion of Championship
28 Caliber Boxers, Plaintiffs necessarily incur the costs of promoting non-

1 championship caliber boxers. Deetz Decl., ¶¶ 19-20. Those boxers are needed to
2 fill out the fight card and present a full event. Shaw Decl., ¶ 4; Sbardellati Decl.,
3 Ex. 6, p. 63:1-24; Sbardellati Decl., Ex. 7, p. 255:8-13. Excluding the costs
4 attributable to the promotion of those non-championship caliber fights would result
5 in artificially higher profits from the promotion of Championship Caliber Boxers.
6 Deetz Decl., ¶ 20. Accordingly, Mr. Deetz's analysis conservatively includes those
7 costs to arrive at the actual profits attributable to the boxing events involving
8 Championship Caliber Boxers.

9 Defendants suggest that Plaintiffs promoted boxing events which featured no
10 Championship Caliber Boxers. *See*, pp. 12-15 above. However, the evidence does
11 not support this assertion. Contrary to Defendants' contentions, Plaintiffs' witnesses
12 have made clear that the main event fights broadcast on television networks such as
13 Fox Sports and Estrella TV do involve Championship Caliber Boxers. Sbardellati
14 Decl., Ex. 6, p. 86:1-89:12; Sbardellati Decl., Ex. 8, 221:22-222:5. Although there
15 may be a larger percentage of non-championship caliber boxers involved in those
16 events, the main event will potentially involve Championship Caliber Boxers. *Id.*

17 Moreover, even if there were occasional Golden Boy events that did not
18 feature any Championship Caliber Boxers, the testimony and Mr. Deetz's analysis
19 demonstrates that those events almost always lose money. Sbardellati Decl., Ex. 8,
20 221:22-222:5; Sbardellati Decl., Ex. 7, 301:6-17; Sbardellati Decl., Ex. 3.
21 Therefore, yet again, including those events in Mr. Deetz's calculation of lost profits
22 only served to reduce Plaintiffs' overall damages. Defendants cannot seriously
23 contend that including expense items which result in a *lower* damages calculation
24 justifies excluding Mr. Deetz's testimony in its entirety.

25 **III. Mr. Deetz's Application of Dr. Kneuper's Criteria is Perfectly Proper.**

26 Defendants' final attack on Mr. Deetz's opinion takes aim at Mr. Deetz's
27 application of Dr. Kenuper's criteria for determining Championship Caliber Boxers.

1 Defendants contend that, by applying Dr. Kneuper's criteria himself, Mr. Deetz is
2 offering an opinion beyond his expertise. Defendants are wrong again.

3 Mr. Deetz does not offer an opinion as to what criteria distinguish
4 Championship Caliber Boxers from non-championship caliber boxers. Rather, he
5 relies on Dr. Kneuper's opinion that the relevant criteria are: a ranking in the top 10
6 or a championship belt within the last two years, a television appearance in the last
7 two years and a US based manager or promoter. Sbardellati Decl., Ex. 2, ¶ 38, n.
8 21. Mr. Deetz then applies these criteria in a rote manner based on data compiled
9 from the same sources as Dr. Kneuper. Sbardellati Decl., Ex. 5, p. 39:22-42:16.
10 There is nothing improper about this analysis.

11 Experts may rely on the opinions of other experts. Fed. R. Evid. 703; *United*
12 *States ex rel. Jordan v. Northrop Grumman Corp.*, 2003 WL 27366224, at *7 (C.D.
13 Cal. Jan. 6, 2003). Indeed, it is customary for damages experts to rely on the
14 opinions rendered by liability experts in calculating damages. *Id.* ("Grim is a
15 damages expert, not a liability expert. She may therefore rely on assumptions about
16 liability made by the Government's liability experts in calculating damages....").
17 That is precisely what Mr. Deetz did here. He relied on Dr. Kneuper's opinions and
18 then applied those opinions to his own analysis. This is perfectly proper.

19 Defendants criticize Mr. Deetz's application of Dr. Kneuper's criteria on two
20 grounds. First, Defendants criticize the fact that the original Exhibit 3 to Mr.
21 Deetz's report incorrectly categorized certain Championship Caliber Boxers as non-
22 championship caliber boxers. *See* pp. 17-19, above. However, Mr. Deetz explained
23 that this was the result of an inadvertent coding error in the classification of the
24 boxers and was corrected prior to his deposition. Sbardellati Decl., Ex. 5, 26:19-
25 28:15. Inadvertent errors such as this may go to the weight of Mr. Deetz's opinions,
26 but they do not render them inadmissible. *See e.g., Micro Chem., Inc. v. Lextron,*
27 *Inc.*, 317 F.3d 1387, 1392 (Fed. Cir. 2003) (Court may not exclude expert testimony
28

1 simply because of a dispute over the reliability of the expert's data or facts relevant
2 to the expert's analysis).

3 Second, and more fundamentally, Defendants contend that Mr. Deetz's
4 classification of boxers "contradicts Dr. Kneuper's conclusions." *See*, p. 17 above.
5 In making this argument, Defendants rely on the assertion that Mr. Deetz "classified
6 **47 separate boxers** as Championship-Caliber that Dr. Kneuper did not..." *Id.* This
7 assertion is grossly misleading, if not downright false, and Defendants know it.

8 To begin with, included in the supposed list of 47 boxers about which
9 Defendants complain are two boxers who are, in fact, listed on Dr. Kneuper's lists.
10 Frankie Gomez appears on Dr. Kneuper's U.S. promoted list as Francisco Gomez,
11 and Michael Angelo Perez also appears on Dr. Kneuper's U.S. promoted list.
12 Sbardellati Decl., Ex. 1, Exh. 4.

13 Focusing only on the remaining 45 boxers, Defendants are comparing apples
14 to oranges. As Mr. Deetz explained in deposition, his lists cover different time
15 periods than Dr. Kneuper's lists. Specifically, Dr. Kneuper's lists are limited to
16 fighters classified as Championship Caliber at the time of Dr. Kneuper's report in
17 2016. Sbardellati Decl., Ex. 1, ¶ 64. Because Mr. Deetz was required to analyze
18 three years of Plaintiffs' boxing promotion activity, his application of Dr. Kneuper's
19 criteria looks at different time periods than that reflected in Dr. Kneuper's lists.
20 Sbardellati Decl., Ex. 5, p. 31:1-34:22. Therefore, there is nothing unusual about the
21 fact that there would be fighters that Mr. Deetz classifies as Championship Caliber
22 that are not on Dr. Kneuper's lists.

23 Indeed, as Dr. Kneuper's report makes clear, boxers can move in and out of
24 the Championship Caliber classification. Sbardellati Decl., Ex. 1, ¶ 61. Most
25 notably, when a boxer retires, even if he was previously classified as Championship
26 Caliber, he will no longer be part of that market. *Id.*, ¶ 61, n. 83. This is true of
27 Floyd Mayweather – one of the 45 allegedly misclassified fighters. By July 2016,
28 Floyd Mayweather had retired from boxing, so he logically is not included in Dr.

1 Kneuper's lists, but is included in Mr. Deetz's list from 2014. Sbardellati Decl., Ex.
2 10, 43:8 (Mayweather is retired); Sbardellati Decl., Ex. 9, 293:2 (retired boxers are
3 excluded from his lists); Sbardellati Decl., Ex. 1, ¶ 61, n. 83. Similarly, a fighter
4 such as Bernard Hopkins, who had not retired as of July 2016, but had been inactive
5 for nearly two years, would not qualify as a Championship Caliber Boxer in July
6 2016 under Dr. Kneuper's criteria because he did not have any activity during the
7 relevant period. But, Mr. Hopkins certainly was a Championship Caliber Boxer in
8 2014 and was properly classified as such by Mr. Deetz. Sbardellati Decl., Ex. 3.
9 Other fighters may have been classified as Championship Caliber in 2014, only to
10 lose one or more fights and fall out of the Championship Caliber classification.

11 Therein lies the fallacy in Defendants' argument. The mere fact that certain
12 fighters are included as Championship Caliber Boxers in Mr. Deetz's analysis, but
13 are not included on Dr. Kneuper's lists says nothing about Mr. Deetz's analysis. It
14 simply reflects that Mr. Deetz's application of Dr. Kneuper's criteria for
15 Championship Caliber Boxers covers a wider time period than the lists attached to
16 Dr. Kneuper's report. Even if there were some merit to this argument, it merely
17 goes to the weight of Mr. Deetz's opinions, not their admissibility. Mr. Deetz
18 properly relied on Dr. Kneuper's opinions regarding liability and applied those
19 opinions in conducting his analysis. That is what is expected from a damages
20 witness. *United States ex rel. Jordan*, 2003 WL 27366224 at *7. Accordingly,
21 there is no basis to exclude Mr. Deetz's opinions.

22 **IV. CONCLUSION**

23 For the foregoing reasons, Defendants have offered no basis on which to
24 exclude Mr. Deetz's testimony and Plaintiffs respectfully request that the Court
25 deny the motion in its entirety.
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27
28

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23 Pursuant to Local Rule 5-4.3.4(a)(2)(i), the filer attests that all other
24 signatories listed, and on whose behalf the filing is submitted, concur in the filing's
25 content and have authorized the filing.
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